

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

<u>KOCH FOODS OF ALABAMA, LLC,</u>)	
an Alabama limited liability company,)	Case No. 07-cv-522-MHT
)	
Plaintiff and Counter-Defendant,)	
)	Honorable Myron H. Thompson
v.)	Honorable Terry F. Moorer
)	
GENERAL ELECTRIC CAPITAL)	
CORPORATION,)	
a Delaware corporation,)	
)	
<u>Defendant and Counter-Plaintiff.</u>)	

**GE CAPITAL'S MOTION FOR STAY OF ORDER AND PROTECTIVE
ORDER ENTERED BY MAGISTRATE JUDGE MOORER PENDING THE
COURT'S RULING ON GE CAPITAL'S OBJECTIONS TO SAID ORDER**

Defendant and Counterclaim-plaintiff, General Electric Capital Corporation ("GE Capital"), through its attorneys, moves the Court for an Order staying the terms of the Order and Protective Order entered by Magistrate Judge Moorer (Court Docket No. 32) pending the Court's ruling on GE Capital's timely filed Objections (Court Docket No. 33) to said Order. In support, GE Capital states:

1. On September 7, 2007, Plaintiff and Counterclaim-Defendant, Koch Foods of Alabama, LLC ("Koch"), voluntarily disclosed a portion of an e-mail chain ("KOCH 939") to GE Capital in the course of discovery. KOCH 939 is page 2 of a three-page e-mail exchange between Mark Kaminsky, chief financial officer for Koch, and Eugene Geekie, counsel for Koch.

2. Subsequently, on September 10, 2007, Koch attempted to assert a privilege over KOCH 939 by including it in a privilege log.

3. Both parties then filed various motions and briefs relating to whether Koch had waived any claim to privilege over KOCH 939 when it voluntarily disclosed it. *See* Court Docket Nos. 22, 24, 26, 27, 29, and 30.

4. The Court referred these motions to Magistrate Judge Moorer for consideration.

5. On November 15, 2007, Magistrate Judge Moorer entered an Order and Protective Order (the “Order”). *See* Court Docket No. 32. In the Order, Magistrate Judge Moorer determined that the privilege had not been waived because the disclosure had been inadvertent. Magistrate Judge Moorer also determined that, “[D]isclosure of the partial e-mail would have a prejudicial effect on Koch[.]” *Id.* Magistrate Judge Moorer directed GE Capital to return KOCH 939 to Koch’s counsel, destroy any copies, and not use the document to defeat the assertions made and defenses raised by Koch in this lawsuit. *Id.*, p. 5.

6. On November 21, 2007, GE Capital, pursuant to Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636(b)(1)(A), filed timely objections (the “Objections”) to the Order. *See* Court Docket No. 33.

7. The terms of the Order should be stayed pending determination by this Court of the Objections. Since GE Capital’s receipt of KOCH 939, GE Capital has sequestered KOCH 939 and has not used it in any way. GE Capital shall continue to do so pending this Court’s ruling on the Objections.

8. Neither party will be prejudiced by granting of the relief requested herein.

WHEREFORE, GE Capital respectfully requests that the Court enter an Order staying the effect of Magistrate Judge Moorer’s Order of November 15, 2007, pending ruling on the Objections.

Dated: November 21, 2007.

Respectfully submitted,

By: /s/ Timothy S. Harris
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Corporation

/s/ Rusha C. Smith
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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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